

REMARKS

Entry of this Communication in response to the Office Action dated December 6, 2005 is respectfully requested.

In the Office Action, the Examiner contends that a *prima facie* case of obviousness has been established to support a rejection of claims 1 – 12 based on a combination of Christiano and Conners.

However, for the following reasons, it is respectfully submitted that the Examiner still has not established a *prima facie* of obviousness to support a rejection of Applicants' invention based on a proposed combination of selected features of Christiano and Conners. Specifically, the Examiner has failed to show the third step of the *prima facie* obviousness determination, namely, that the prior art references, when combined, must teach or suggest all of the claim limitations. It is respectfully submitted that Christiano and Conners do not teach or suggest all of the claimed features of Applicants' invention.

The Examiner lists all of the features of Christiano which he contends correspond to each of the claimed elements of Applicants' invention as set forth in claim 1. The Examiner notes that "Christiano does not explicitly describe a system which uses servers from an Application Service Provider (ASP) to host applications for the customers Conners et al. discloses a system and method for automatically negotiating license agreements and installing arbitrary user-specified applications on Applications Service Providers."

The Examiner contends that it would have been obvious to one of ordinary skill in the art of digital content distribution and delivery over an open network to provide the user with an option to execute requested digital content on an ASP's server and to provide pay-per-use licensing agreement, based on application share among multiple enterprises with multiple users on a virtual host.

It is pointed out that the features listed by the Examiner in Christiano are for a single customer computer network. Conners teaches the execution of digital content on an Application Service Provider (ASP). Christiano teaches a licensing arrangement wherein a decision is made to execute or not execute a selected piece of digital content based on available license units.

What the cited references do not teach or suggest is a licensing arrangement for a combination computer network and Application Service Provider network which enables the user to execute a selected piece of digital content on one of the customer network and the ASP network, with a decision on whether the selected piece of digital content will be executed on the selected customer computer network or the ASP network being made based on a determination of the difference between the available units on the customer network requesting execution of the digital content which is equal to the difference between the total license units to the customer computer network and the total checked-out units charged to the customer computer network for digital content currently being executed by the customer computer network and by the Application Service Provider for the customer, and the assigned units.

The licensing arrangement in Christiano is specific to allow execution or non-execution of digital content based on activities only on the customer network. Similarly, Conners is specific to execution of digital content only on an Application Service Provider network.

The references lack any teaching or suggestion of how to merge a customer network and an ASP network to allow selection of the customer network or the ASP network for execution of a piece of digital content based on customer activities with respect to currently executed digital content on both the customer network and the ASP network.

Any suggestion as to the determination of whether or not a piece of digital content is to be executed which takes into account currently executed digital content on both the customer network and the ASP network can be found only in Applicants' invention. Since hindsight reconstruction prohibits the use of Applicants' teachings as a basis for such a suggestion, it is respectfully submitted that Christiano and Conners fail to teach or suggest these features of Applicants' invention.

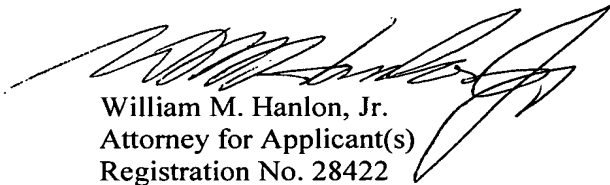
Without these features, it is respectfully submitted that the Examiner has not established a *prima facie* case of obviousness to support a rejection of

Applicants' invention as set forth in claims 1 – 12 over any permissible combination of the features of Christiano and Conners.

As such, it is respectfully submitted that Applicants' invention as set forth in claims 1 – 12 patentably defines over the cited references. Claims 1 – 12 are therefore submitted to be in condition for allowance; a notice of which is respectfully requested.

Respectfully submitted,

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